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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,662	02/18/2005	G. Clarke Oberheide	19339-098289	2319

7590 04/07/2008
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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/501,662	Applicant(s) OBERHEIDE, G. CLARKE	
	Examiner Gregory J. Strimbu	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

The information disclosure statement filed July 15, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the French Patent Publication No. 2 769 941 and the PCT Patent Publication WO 01/83924 has not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "14" on line 13 of page 3; "36" on line 4 of page 4; and "42" on line 9 of page 4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "is disclosed" on line 2 can be easily implied and therefore should be deleted. On lines 24-25, "[t]he linkage is from a retracted position" is confusing since it is unclear what the applicant is attempting to set forth. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 1-10 and 12-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a slot providing lost motion" on lines 18-19 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How can a slot, with nothing more, provide "lost motion".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Wright et al. (US 6092336). Wright et al. discloses a liftgate actuating assembly for moving a liftgate 11 of a motor vehicle 13 between an open position and a closed position, said liftgate actuating assembly comprising:

a motor 23 fixedly secured to the motor vehicle, said motor having an output shaft 26 capable of bi-directional rotation;

a drive gear 60 rotatable about a drive shaft 62, said drive gear operatively connected to said output shaft to be rotated thereby;

a cable drum 20 rotatably mounted to said drive shaft, said cable drum coupled to said drive gear to be rotated thereby, said cable drum including a cable 21 wrapped thereabout between a drum end fixedly secured to said cable drum and a liftgate end fixedly secured to the liftgate for retracting the liftgate from the open position to the closed position; and

a connecting device 17 operatively connected to said drive gear, said connecting device movable from a retracted position to an extended position such that said connecting device forces the liftgate from the closed position to the open position when said connecting device moves from said retracted position to said extended position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sedlak (US 6318025) in view of Ciavaglia et al. (US 6142551). Sedlak discloses a liftgate actuating assembly for moving a liftgate 12 of a motor vehicle 10 between an open position and a closed position, said liftgate actuating assembly comprising:

a motor 26 fixedly secured to the motor vehicle, said motor having an output shaft 35 capable of bi-directional rotation;

a drive gear 30, said drive gear operatively connected to said output shaft 35 to be rotated thereby;

a cable drum 36, said cable drum coupled to said drive gear to be rotated thereby, said cable drum including a cable 32 wrapped thereabout between a drum end fixedly secured to said cable drum and a liftgate end fixedly secured to the liftgate for retracting the liftgate from the open position to the closed position; and

a linkage 34 operatively connected to said drive gear, said linkage movable from a retracted position to an extended position such that said linkage forces the liftgate from the closed position to the open position when said linkage moves from said retracted position to said extended position, said linkage including a slot (not numbered, but shown in figure 5 between the arms 40) providing lost motion within said linkage

allowing the liftgate to be moved manually to the closed position without said motor being activated. Sedlak is silent concerning a transmission, a curvilinear arm 40, a rod 46, the rod 46 includes a slot through which the pin 44 extends, the arm includes an arm mount, the rod includes a rod mount

However, Ciavaglia discloses a liftgate actuating assembly comprising a transmission 28 comprising a drive gear 28C rotatable about a drive shaft (not numbered, but shown in figure 3).

It would have been obvious to one of ordinary skill in the art to provide Sedlak with a transmission, as taught by Ciavaglia et al., to increase the torque output of the motor while reducing the size of the motor.

Allowable Subject Matter

Claims 7-10 and 18-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach a spring mounted between the arm and rod mounts to bias the arm and rod mounts toward each other. See lines 1-3 of claim s 7 and 18.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chapman, Kral, Timothy, Johnk, Woods, Van Der Stigchel, and Menke are cited for disclosing a liftgate actuator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634